
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the)	CC Docket No. <u>96-128</u> ✓
Pay Telephone Reclassification)	
and Compensation Provisions of the)	
Telecommunications Act of 1996)	
)	
Policies and Rules Concerning)	CC Docket. No. 91-35
Operator Service Access and)	
Pay Telephone Compensation)	
)	
Petition of the Public Telephone)	
Council to Treat Bell Operating Company)	
Payphones as Customer Premises)	
Equipment)	
)	
Petition of Oncom Communications)	
Requesting Compensation for)	
Competitive Payphone Premises)	
Owners and Presubscribed Operator)	
Services Providers)	
)	
Petition of the California Payphone)	
Association to Amend and Clarify)	
Section 68.2(a) of the)	
Commission's Rules)	
)	
Amendment of Section 69.2(m))	
and (ee) of the Commission's Rules)	
to Include Independent Public)	
Payphones Within the "Public)	
Telephone" Exemption from End User)	
Common Line Access Charges)	

REPORT AND ORDER

Adopted: September 20, 1996 Released: September 20, 1996

By the Commission: Commissioner Chong issuing a statement.

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I. INTRODUCTION

1. On June 4, 1996, the Commission adopted a Notice of Proposed Rulemaking ("Notice") to implement Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act").¹ In this Report and Order, the Commission adopts new rules and policies governing the payphone industry that: (1) establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[;]"² (2) discontinue intrastate and interstate carrier access charge payphone service elements and payments and intrastate and interstate payphone subsidies from basic exchange services;³ (3) prescribe nonstructural safeguards for Bell Operating Company ("BOC") payphones;⁴ (4) permit the BOCs to negotiate with payphone location providers on the interLATA carrier presubscribed to their payphones;⁵ (5) permit all payphone service providers to negotiate with location providers on the intraLATA carrier presubscribed to their payphones;⁶ and (6) adopt guidelines for use by the states in establishing public interest payphones to be located "where there would otherwise not be a payphone[.]"⁷

2. The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. The 1996 Act erects a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."⁸ In this proceeding we advance the twin goals of Section 276 the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public..."⁹ To this end, we seek to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996) ("Notice"). The complete text of Section 276 is attached as Appendix A.

² 47 U.S.C. § 276(b)(1)(A).

³ 47 U.S.C. § 276(b)(1)(B).

⁴ 47 U.S.C. § 276(b)(1)(C).

⁵ 47 U.S.C. § 276(b)(1)(D).

⁶ 47 U.S.C. § 276(b)(1)(E).

⁷ 47 U.S.C. § 276(b)(2).

⁸ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

⁹ 47 U.S.C. § 276(b)(1).

to customers through payphones. At the same time, we recognize that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, we will continue for a limited time to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.

3. Congress has directed us to take certain actions to effectuate its goals in the payphone area including the removal of subsidy schemes, providing for nondiscriminatory access to bottleneck facilities, ensuring fair compensation for all calls from payphones, and allowing all competitors equal opportunity to compete for essential aspects of the payphone business. In general, we believe that vigorous and unfettered competition is the best way of achieving Congress' dual objectives. Unfortunately, various barriers -- regulatory, structural, economic, and technological -- stand in the way of having a fully competitive market providing payphone services. For example, the lack of an effective per-call tracking mechanism is a technological barrier that prevents market forces from readily achieving Congress' goal of ensuring fair compensation to payphone services providers ("PSPs"). Regulatory restrictions on the placement of payphones, and existing subsidies from other telecommunication services available to certain competitors but not others are also examples of regulatory inefficiencies affecting competition and the widespread deployment of payphones.

4. In this Report and Order, we take the critical steps necessary to remove these barriers. Some barriers are removed right away. For example, we establish an immediate plan to ensure that PSPs receive fair compensation, especially for those calls for which PSPs have not been compensated in the past. We also order that subsidies from basic telecommunications services paid to some carriers for providing payphone services be terminated as soon as it is practicable. We condition the competitive entry of these carriers into the nonregulated activity of providing payphone services on their termination of these subsidies. Similarly, we allow the BOCs to negotiate with the payphone location providers in selecting and contracting with the telecommunications carriers that provide interLATA service from their payphones, but only after they have put in place nonstructural safeguards necessary to protect against a BOC from unlawfully subsidizing its payphone operations from its local exchange services or otherwise engaging in anti-competitive behavior.

5. Removing other types of barriers to full competition will take more time. For example, the ability to track toll-free calls has not been developed fully. Until that functionality is available, as we have specified in this Report and Order, our plan for ensuring fair compensation will be a proxy that closely resembles the behavior of the marketplace as demonstrated by the record of this proceeding. To the extent that they exist, removing entry and exit restrictions placed upon the provisioning of payphone services will also take time because it requires action by the states. During the interim period before subsidies for LEC payphones are terminated and per-call compensation becomes effective, the states should examine and remove those regulations that affect the ability of PSPs to freely enter and exit this business.

6. Although we embark in this Report and Order on a new deregulatory structure for the payphone industry, we take a number of steps to facilitate use of payphones by consumers. First, we require that each payphone clearly indicate the local coin rate within the informational placard on each payphone. Pursuant to existing requirements,¹⁰ this placard must provide information on the operator service provider presubscribed to the payphone and the address of the Commission, to which the consumer may direct complaints regarding operator services. Second, we require that each payphone provide access, free of charge to the caller, to emergency calling, telecommunications relay service calls for the hearing disabled, and dialtone generally.

7. In addition, payphones unquestionably serve critical public interests in health, safety and welfare. It is possible, however, that reliance on the market may fail to provide adequately for payphones in locations serving important public needs, because some payphones providing these benefits may not be economically self-supporting. For example, payphones in neighborhoods with low residential phone penetration, or along deserted stretches of highway, can be essential for public safety but fail to be revenue-generating for various reasons, including lack of sufficient traffic, damage from extreme weather conditions, or high maintenance costs. For these reasons, we establish criteria by which the states may maintain and fund public interest payphones in locations serving health, safety, and welfare goals, where they would not otherwise exist as a result of the operation of the market. Public interest payphones will also further our policies on emergency access¹¹ and telecommunications relay service calls for the hearing disabled.¹² But while we grant the states broad discretion in administering and funding public interest payphone programs, we also require that they do so in a manner which does not upset the competitive balance of the payphone market (*i.e.*, competitively neutral), and that fairly and equitably compensates those entities providing public interest payphones.

8. Our ultimate goal is to have a competitive payphone industry that meets the needs of the public by a wide deployment of payphones. In our view, we can best facilitate this by putting in place rules and regulations that provide incentives to all the players in the industry to eliminate, as soon as possible, all of the market distorting factors that exist today.

¹⁰ 47 CFR § 64.703.

¹¹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Notice of Proposed Rulemaking, 9 FCC Rcd 6170 (1994) ("911 Notice").

¹² Telecommunications Relay Services and the Americans with Disabilities Act, CC Docket No. 90-571, Memorandum Opinion and Order, 10 FCC Rcd 10927 (Com. Car. Bur. 1995).

II. BACKGROUND

9. As the Commission discussed in the Notice, payphone services have historically been regulated by the states and the Commission.¹³ To date, the states have regulated payphones as part of the LEC's network-based service. Some states have also imposed regulation on the operator service rates charged at payphones maintained by non-LEC, independent payphone providers. The Commission has focused on payphones primarily in the context of our regulation of carriers that provide operator-assisted long-distance service, known as operator service providers ("OSPs"), and in particular, our implementation of the Telephone Operator Consumer Services Improvement Act ("TOCSIA").¹⁴ Among other things, TOCSIA directed the Commission to determine whether independent payphone providers should receive compensation for originating interstate calls to non-presubscribed OSPs from their payphones.¹⁵ The Commission's consideration of compensation issues under TOCSIA led to the creation of a compensation mechanism that is an antecedent to the one adopted in the instant proceeding.¹⁶ Currently, there are approximately 1.5 million incumbent local exchange carrier ("LEC") payphones¹⁷ and approximately 350,000 competitively provided payphones.¹⁸

10. As stated in the Notice, Section 276(b)(1)(A) directs the Commission to establish a compensation plan to ensure "that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call" from their payphones.¹⁹ Section 276(b)(1)(B) mandates that the Commission "discontinue the intrastate and interstate

¹³ For a brief history of the payphone industry, see Notice at paras. 2-12.

¹⁴ Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226).

¹⁵ 47 U.S.C. § 226(e)(2).

¹⁶ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736 (1991) ("First Report and Order"); Order on Reconsideration, 7 FCC Rcd 4355 (1992) ("Subscriber 800 Reconsideration Order"); Second Report and Order, 7 FCC Rcd 3251, 3252-53 (1992) ("Second Report and Order"); Order on Reconsideration, 8 FCC Rcd 7151 (1993) ("Reconsideration Order"); remanded for further proceedings, Florida Public Telecommunications Association v. FCC, 54 F.3d 857, 860 (D.C.Cir. 1995) ("Florida Payphone"); Memorandum Opinion and Order on Further Reconsideration and Second Further Notice of Proposed Rulemaking, 10 FCC Rcd 11457 (1995) ("Second Further Notice"). Because the compensation issues raised in the Second Further Notice have been subsumed into this proceeding, we terminate that proceeding. See para. 374, below.

¹⁷ Statistics of Communications Common Carriers, 1994/1995 edition, Common Carrier Bureau, FCC at 159, Table 2.10 (1995) ("Common Carrier Statistics").

¹⁸ Notice at para. 6, n.22.

¹⁹ 47 U.S.C. § 276(b)(1)(A). The provision exempts from compensation emergency calls and telecommunications relay service ("TRS") calls for hearing disabled individuals. Id.

carrier access charge payphone service elements and payments ... and all intrastate and interstate subsidies from basic exchange and exchange access revenues."²⁰ In addition, Section 276(b)(1)(D) directs the Commission to consider whether BOCs should be granted certain rights already available to all other PSPs to participate in the location provider's selection of presubscribed interLATA carrier, while Section 276(b)(1)(E) grants certain rights to all PSPs to participate in the selection of presubscribed intraLATA carriers.²¹ Together with the other subsections of Section 276, these three provisions help to establish regulatory parity for all PSPs, whether independent payphone providers or incumbent LECs (both independents LECs and BOCs).²²

III. ISSUES

THE PAYPHONE MARKETPLACE

11. According to the record in this proceeding, the payphone industry has the potential to be very competitive.²³ Entry into the payphone business appears to be easy. The ability to purchase a payphone, secure a location contract, obtain a payphone line from the LEC, and maintain the payphone are, together, the minimal technical requirements to enter into the payphone business.²⁴ In addition, payphone lines are part of the tariffed offerings of local exchange carriers and, in some jurisdictions, only a simple business line is required to the payphone service. As contracts come up for renewal, or as location providers find it economical to put in new payphones, PSPs and interexchange carriers ("IXCs") routinely make themselves available to negotiate new agreements among themselves and the location provider.

12. A payphone can be removed and used at another location, which facilitates entry and exit. If a PSP can easily redeploy its assets, it will be more willing to place a

²⁰ 47 U.S.C. § 276(b)(1)(B).

²¹ 47 U.S.C. §§ 276(b)(1)(B) & (E).

²² In response to the Notice, the Commission received 87 initial comments and 47 replies. Appendix B lists the parties filing comments and the abbreviated names this Order uses to refer to them. Similarly, Appendix C lists replies.

²³ An industry's competitive structure is generally determined by five factors. These are: (1) level of rivalry between existing firms; (2) potential new entrants; (3) bargaining power of suppliers; (4) bargaining power of buyers; and (5) availability of substitutes. See generally M. Porter, Competitive Advantage and Competitive Strategy.

²⁴ According to the RBOCs, there are over 15,000 PSPs. Ex Parte Letter of Ben Almond, Executive Director of Federal Regulatory, to William Caton, Secretary, FCC (August 15, 1996). APCC has stated that fewer than 25 independent payphone providers have more than 1500 payphones. Ex Parte letter from Albert Kramer, Counsel, APCC, to William Caton, Secretary, FCC (September 6, 1996).

payphone in response to a small increase in price, because the risk of such placement is lower.²⁵ In addition, there appear to be no significant scale or scope economies or network externalities that would impede entry of new firms.²⁶ As a result, barriers to entry appear to be very low.²⁷ In fact a large number of firms, both large and small, have entered the industry since it was initially opened to competition in 1984, and those firms have provided competition in at least some segments of the payphone market.²⁸

13. The competition we observe today, however, has been significantly distorted by government regulation of prices, regulatory barriers to entry and exit, as well as by significant subsidies from other telecommunications services. Regulated prices prevent the market from operating efficiently to deploy payphone facilities. Moreover, some states currently prohibit the provision of payphone service by any entity other than the incumbent LEC. Removing these types of entry and exit restrictions is a necessary step toward allowing competitive forces to guide both the deployment of payphones and the setting of prices for payphone services.²⁹

14. Even after such regulatory barriers are removed, there are three structural reasons why, at least initially, the full benefits of competition may not be realized by all segments of the payphone market. First, independent PSPs currently rely on LECs for basic payphone services. LEC participation both in providing payphones to the public and also providing the underlying tariffed payphone services to independent PSPs may give LECs the incentive and the potential ability to unfairly act to the detriment of their PSP competitors and to act in other anti-competitive ways against PSPs. However, by implementing safeguards, we intend to ensure that LECs cooperate fully in the provision of any necessary payphone services and do not otherwise restrain competition, as long as LECs remain the monopoly providers of these services.³⁰

²⁵ See Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH) 13, 104 at para. 1.3 (1992) ("1992 Merger Guidelines") ("A firm viewed as a [market] participant if, in response to a small but significant and nontransitory price increase, it likely would enter rapidly into production or sale of a market product in the market's area, without incurring significant sunk costs of entry and exit.").

²⁶ Id. at para. 33.

²⁷ The ability to enter and exit easily is generally thought to be evidence of a competitive industry. See Baumol, Panzar, and Willig, Contestible Market Theory at 466.

²⁸ The record indicates that the average BOC payphone originates about 500 calls per month while the average independent payphone originates about 700 calls per month. APCC Comments at 5. This suggests that independent PSPs have entered markets in which there is higher than average payphone traffic.

²⁹ See para. 49, below. For example, there are large variations in the number of independent payphone providers in the various states. In BellSouth's nine-state region, there are the following number of certifications: Alabama 110; Florida 1016; Georgia 505; Kentucky 293; Louisiana 243; Mississippi 107; North Carolina 491; South Carolina 1102; Tennessee 387. Ex Parte Letter of Ben Almond, Executive Director of Federal Regulatory, BellSouth, to William Caton, Secretary, FCC (August 15, 1996).

³⁰ See generally Section C, below.

15. Second, there are certain locations where, because of the size of the location or the caller's lack of time to identify potential substitute payphones, no "off premises" payphone serves as an adequate substitute for an "on premises" payphone. In such locations, the location provider can contract exclusively with one PSP to establish that PSP as the monopoly provider of payphone service. Absent any regulation, this could allow the PSP to charge supra-competitive prices. The location provider would share in the resulting "locational rents" through commissions paid by the PSPs. To the extent that market forces cannot ensure competitive prices at such locations, continued regulation may be necessary.³¹ Payphones in many locations are likely to face a sufficient level of competition from payphones at nearby locations to ensure that prices are at the competitive level. As a result, we believe that payphones at such locations are unlikely to need additional scrutiny.

16. Third, for competitive markets to work properly, it is essential that consumers have full information concerning the choices available to them. Information on prices for payphone service is of primary importance.³² The instant Report and Order concerns two different types of consumers who need to be informed of the charges they will face: (1) consumers who choose to use a payphone for local, 0+,³³ or access code calls,³⁴ and (2) consumers who contract with an IXC for the ability to receive subscriber 800 calls.³⁵ Although we have no evidence in the record that the current disclosure of local coin rates are inadequate, our past experience requires us to ensure that such disclosures, including, at a minimum, the posting of the local coin rate, are effective in communicating necessary cost information to consumers. We look to the states to review their regulations and modify them to ensure the

³¹ See para. 51, below.

³² See e.g., Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996) ("OSP Reform"). In the OSP Reform proceeding, we have proposed rules to ensure that operator service providers ("OSPs") inform consumers of their price, or if their price will be higher than that charged by the largest OSPs. While OSP Reform is separate from the instant proceeding, the OSP rules we ultimately adopt will benefit those who make calls from payphones.

³³ A 0+ call occurs when the caller dials "0" plus the called telephone number. 0+ calls include credit card, collect, and third number billing calls. Second Report and Order, 7 FCC Rcd at 3251, n.4. 0- call transfer service is a service offered by LECs to OSPs under which LECs transfer a 0- call (when a caller dials only the digit "0" and then waits for operator intervention) to the OSP requested by the calling party. Id. at 3255, n.44.

³⁴ The Second Report and Order defines an "access code" as a "sequence of numbers that, when dialed, connects the caller to the OSP associated with that sequence, as opposed to the OSP presubscribed to the originating line. Access codes include 10XXX in equal access areas and "950" Feature Group B dialing (950-0XXX or 950-1XXX) anywhere, where the three-digit XXX denotes a particular IXC. Some OSPs use an 800 number as an access code." Id. at 3251, n.1.

³⁵ "Subscriber 800 calls" consist of calls to an 800 number assigned to a particular subscriber. Notice at para. 11, n.37. In the Notice, we stated that, for purposes of this proceeding, "the term 'subscriber 800 calls' includes other sequences of numbers that the FCC deems, or may deem in the future, the equivalent of subscriber 800 numbers, such as numbers with an '888' code." Notice at para. 15, n.49.

adequacy of the disclosure.³⁶ Consumers thus will have the information available to them at the time they decide to make a call from a payphone.

17. As discussed more fully below,³⁷ the PSP will be permitted to levy a charge each time a caller dials a subscriber 800 number. We conclude that the charge must be paid directly by the IXC, although the carrier may pass it through to the 800 subscriber, either on a per-call basis, or in the form of higher per-minute rates. Once it is possible to track subscriber 800 calls, a competitive market may pass these costs along in the same manner as they are incurred -- on a per-call basis -- to the called customer. If charges are not passed on in this manner, the called party's incentives for accepting or declining a particular call will be distorted. IXCs also have the option of blocking subscriber 800 calls from payphones, if they do not want to pay the per-call payphone compensation charge.³⁸

18. Aside from these three structural concerns, we recognize that the payphone industry has not operated without the entry and exit restrictions and subsidies that currently exist. When these subsidies are terminated and barriers are removed, other structural problems or market imperfections may develop that would mitigate the benefits of a competitive market. However, our continued monitoring of the marketplace will ensure that the rules we adopt will lead to both competitive prices for payphone service and an efficient supply of payphones.

19. One of the goals of Section 276 is the deployment of payphones to benefit the "public health, safety and welfare."³⁹ The competitive marketplace, however, will not always lead to an adequate supply of payphones in areas where they are not economically viable. For this reason, we conclude that public interest payphones should be maintained, although we define the term narrowly to exclude those payphones that would be provided through the normal workings of the marketplace.⁴⁰ Our conclusions regarding public interest payphones will ensure that there will be an efficient supply of payphones, although we recognize that the states are better equipped to determine where these public interest payphones should be placed. In addition, by ensuring that PSPs receive the benefits of their payphone investments, these PSPs will compete to place additional payphones in a variety of geographic areas.⁴¹ Therefore, public safety will be enhanced because of requirements that emergency access be available from all payphones

³⁶ See paras. 49-50, below.

³⁷ See para. 52, below.

³⁸ See para. 49, below.

³⁹ 47 U.S.C. § 276(b)(1).

⁴⁰ See, e.g., *Ex Parte* Letter of Garry Mendez, Jr., Executive Director, National Trust for the Development of African-American Men to William Caton, Secretary, FCC (September 6, 1996) (market-based rates will help ensure that payphones remain widely available in residential neighborhoods).

⁴¹ See generally Section A, below.

at no cost the caller. This increased emergency access from payphones is consistent with the Commission's proposals to ensure telephone compatibility with enhanced emergency calling systems.⁴² In sum, we believe that the increased access, free of charge to the caller, to emergency calling, telecommunications relay service calls for the hearing disabled, and dialtone generally, may be one of the most significant benefits of the compensation approach we adopt in this Report and Order.

A. COMPENSATION FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES

20. Section 276 requires that we establish a plan to ensure fair compensation for all calls. As discussed below, fair compensation can be ensured best when the PSP can track the calls made from the payphone on a call-by-call basis and be assured efficient payment for those calls; when the market can set a fair rate for the call; and when the caller has the information necessary to make an informed choice as to whether to make the call and incur the compensation charge.

1. Payphone Calls Subject to this Rulemaking and Compensation Amount

a. The Notice

21. Most calls originated on payphones are within one of the following categories: (1) coin calls; (2) directory assistance calls; (3) operator service ("0+" and "0-") calls; (4) access code calls (using, e.g., "10XXX" codes and "1-800" or "950" carrier access numbers); and (5) subscriber 800 calls. Each of these categories can be further subdivided between local, intraLATA toll, intrastate interLATA, interstate interLATA, and international. In the Notice, the Commission sought comment on what constitutes "fair" compensation; whether international calls should be included in the compensation plan; and whether calls for which the PSP currently receives compensation should be included in the plan.⁴³ The Commission tentatively concluded that we must at least prescribe standards for determining fair compensation for all access code calls, subscriber 800 and other toll-free number calls, and debit card calls.⁴⁴ The Commission tentatively concluded that it was not necessary to prescribe per-call compensation for 0+ calls originated by payphones, because these calls were compensated pursuant to contracts between the PSP and the presubscribed IXC.⁴⁵ The Commission sought comment on whether intraLATA 0+

⁴² 911 Notice.

⁴³ Notice at paras. 16, 18.

⁴⁴ Id. at para. 17.

⁴⁵ Id. at para. 16.

calls carried by the presubscribed intraLATA carrier should be treated differently than local coin calls.⁴⁶

22. With regard to local rates, the Commission stated that there is some evidence that the rate may not necessarily fairly compensate the PSP.⁴⁷ We sought comment on how to fulfill the Act's mandate in this regard. The Commission proposed a range of options for ensuring fair compensation for local coin calls. One was to set a nationwide local coin rate for all calls originated by payphones.⁴⁸ Another was for the Commission to prescribe specific national guidelines that states would use to establish a local rate to ensure that all PSPs are fairly compensated.⁴⁹ A third was for the states to continue to set the coin rates for local payphone calls according to factors within their discretion.⁵⁰ Under each approach, the Commission sought comment on what specific public interest benefits commenters believe would result from adoption of a particular option.⁵¹

23. In addition, the Commission tentatively concluded that international calls originated by payphones should be compensated, because we found no evidence of congressional intent to leave these calls uncompensated.⁵² The Commission also sought comment on what rules, if any, should be adopted to prevent the improper use of subscriber 800 numbers to increase compensation, as well as other types of fraud.⁵³

24. Citing the lack of reliable independent payphone provider specific cost data, the Commission tentatively concluded in the Notice that PSPs should be compensated for their costs in originating the types of calls for which compensation is deemed appropriate, and that these costs should be measured by appropriate cost-based surrogates.⁵⁴ For appropriate cost-based surrogates, the Commission sought comment on whether some measure of generic or industry-wide costs is available, whether incumbent LECs' costs would be a reasonable surrogate for independent payphone providers' costs, and whether some other existing set of rates, such as

⁴⁶ Id. at para. 22.

⁴⁷ Id. at para. 22, n.64.

⁴⁸ Id. at para. 21.

⁴⁹ Id.

⁵⁰ Id. at para. 22.

⁵¹ Id. at paras. 21-22.

⁵² Id. at para. 18.

⁵³ Id. at para. 23.

⁵⁴ Id. at para. 38.

state-established rates for local coin calls, would be a reasonable surrogate.⁵⁵ The Commission also sought comment on whether we should prescribe different per-call compensation amounts for the different types of calls originated by payphones. The Commission requested comment on how compensation levels should be permitted to change in the future, and whether some cost index or price cap system would be appropriate to ensure that compensation levels reflect expected changes in unit costs over time.⁵⁶

b. Comments

i. Compensable Calls

25. A wide range of commenters, including IXCs, RBOCs,⁵⁷ independent LECs, states, and independent payphone providers, support the Commission's tentative conclusion that we must at least prescribe standards for determining fair compensation for all access code calls, subscriber 800 and other toll-free number calls, and debit card calls.⁵⁸ Many of these commenters also agree with the Commission's tentative conclusion that it is not necessary to prescribe compensation for 0+ calls carried by a payphone's presubscribed carrier.⁵⁹ They argue that compensation agreements between the presubscribed carrier and PSP or location provider ensure that the PSP will be fairly compensated for these calls.⁶⁰ CompTel further contends that mandating per-call compensation for 0+ calls in addition to that provided by contract would overlap with the Commission's intent to address operator service rates for payphones in the OSP Reform proceeding.⁶¹ The RBOCs argue that the Commission need not prescribe compensation for 0+ calls as a general rule, although the Commission must require OSPs to pay compensation on all presubscribed calls made on BOC payphones to compensate the BOCs for use of their

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Use of the term "RBOCs" in this Report and Order refers to the RBOC Payphone Coalition, which includes six of the seven Bell Operating Companies, but does not include Ameritech.

⁵⁸ See, e.g., AT&T Comments at 4-5; GTE Comments at 3; RBOC Comments at 2. MobileMedia argues that the Commission should initiate a separate proceeding to evaluate compensation options for subscriber 800 calls. MobileMedia Reply at 11-12.

⁵⁹ See, e.g., Actel Comments at 4; AT&T Comments at 4; Cable & Wireless Comments at 4; California PUC Comments at 9; CompTel Comments at 4; Florida PSC Comments at 2; GTE Comments at 3; MCI Comments at 2; One Call Comments at 3; Sprint Comments at 4-5; USTA Comments at 3; WorldCom Comments at 8.

⁶⁰ Id.

⁶¹ CompTel Reply at 4.

payphones when the BOC does not have a contractual relationship with the presubscribed carrier.⁶² The RBOCs contend that because Section 276(b)(3) expressly grandfathers contracts existing before the date of the statute's enactment between the location provider and the presubscribed carrier on many BOC payphones, the BOCs would not otherwise receive any compensation for these 0+ calls.⁶³ Sprint argues that the Commission should not mandate compensation for any calls that make use of a payphone's presubscribed carrier, because any call using the presubscribed carrier would be compensated under the terms of the contract.⁶⁴ The RBOCs contend, however, that the amount of dial-around calls has no relationship to a payphone's presubscribed carrier, and that the PSP has no authority to block these calls to force revenue generating calls.⁶⁵ Conquest argues that the Commission should exempt 0+ calls that make use of an 800 number as a presubscription device, which is transparent to the caller.⁶⁶

26. Other commenters, notably USTA and APCC, argue that the statutory duty to mandate compensation for "each and every completed intrastate and interstate call" requires the Commission to mandate a per-call compensation rate for 0+ calls, regardless of any compensation agreements between the presubscribed carrier and the PSP.⁶⁷ APCC argues that state-imposed rate ceilings on intrastate 0+ calls prevent PSPs from receiving fair compensation.⁶⁸ In addition, it contends that 0+ commission payments are for the value to the IXC of receiving the presubscribed traffic and do not address the need for use of the payphone.⁶⁹ The RBOCs, Ameritech, and GTE argue that 0+ compensation could be established as a default rate, which could be eliminated or supplanted through negotiations between the requisite parties.⁷⁰

27. The commenters take varying positions on what action the Commission should take to ensure fair compensation for local coin calls from payphones. The independent

⁶² RBOC Comments at 4-5.

⁶³ *Id.* Ameritech also contends that, for the RBOCs, two issues are directly linked: (1) compensation for 0+ calls under Section 276(b)(1)(A); and (2) the ability of the RBOCs to participate in negotiation with the location provider on the selection of the presubscribed interLATA carrier under Section 276(b)(1)(D). Ameritech Comments at 4-5.

⁶⁴ Sprint Comments at 6. See also AT&T Reply at 16.

⁶⁵ RBOC Reply at 2.

⁶⁶ Conquest Comments at 12.

⁶⁷ APCC Comments at 20-21; Communications Central Comments at 5-6; IPTA Comments at 4; USTA Comments at 1.

⁶⁸ APCC Comments at 19.

⁶⁹ *Id.* at 20.

⁷⁰ Ameritech Reply at 1-4; RBOC Reply at 10-11; GTE Reply at 4.

payphone providers support the Commission's option of a nationwide local coin call rate.⁷¹ They argue that a nationwide rate is necessary to override inconsistent state rules, to ensure predictability of rates for interstate travelers, to break the dependence of PSPs on 0+ commissions, and to establish a single, uniform rate for all local coin calls.⁷² APCC contends that this nationwide rate would serve as the maximum rate that PSPs could receive for a local coin call, and PSPs would likely respond to competition in local areas by lowering this per-call rate.⁷³ Other parties specifically oppose a nationwide local coin rate.⁷⁴ They argue that regional differences in handling payphone calls make a single nationwide rate impractical.⁷⁵ Several commenters state that the Commission lacks authority to set local coin rates under both Section 276 and the Act.⁷⁶ They argue that the ability to ensure compensation is different than jurisdiction over retail rates, and that nothing in Section 276 suggests that Congress intended to remove local coin rates from the jurisdiction of the states.⁷⁷ APCC contends, however, that the Commission has the requisite authority to impose a nationwide local coin rate, because Section 276's mandate to ensure fair compensation extends to setting local coin rates.⁷⁸

28. Other commenters, including USTA, Ameritech, and GTE, argue that the Commission should adopt federal guidelines that the states would use to adopt local coin rates that fairly compensate PSPs for the use of their payphones.⁷⁹ They argue that the guidelines must recognize that costs associated with local calls vary and have individual market characteristics, and that the states must be directed to eliminate all subsidies from other local exchange operations and from interexchange carriers.⁸⁰ US West argues that the Commission should not require the

⁷¹ See, e.g., Actel Comments at 8; APCC Comments at 13-19; Communications Central Comments at 8; FPTA Comments at 4; NJPA Comments at 5-6; Peoples Comments at 17-19; SCPA Comments at 3; Telaleasing Reply at 3-4.

⁷² APCC Comments at 13-19; Peoples Comments at 17-19.

⁷³ APCC Reply at 8.

⁷⁴ See, e.g., California PUC Comments at 12; Maine Comments at 5-7; SW Bell Reply at 3.

⁷⁵ Id.

⁷⁶ See, e.g., Bell Atlantic Comments at 1; MPTA Comments at 4-5; Missouri PSC Reply at 3; contra APCC Reply at 4-7.

⁷⁷ Id.

⁷⁸ APCC Reply at 4-7.

⁷⁹ See, e.g., Ameritech Comments at 7; Brill Comments at 1-2; GTE Comments at 4; GVNW Comments at -3; New Jersey DRA Comments at 2; USTA Comments at 4.

⁸⁰ Id.

states to reexamine their respective local coin rates unless the per-call rate is below the nationwide predominant rate of \$.25.⁸¹

29. Many states argue that the Commission must defer to the states in setting the local coin rates.⁸² They argue that the states must maintain their wide discretion in setting the specific local coin rates.⁸³ Florida PSC, Indiana URC, and Tennessee contend that the Commission should prescribe a nationwide local coin rate or price cap and allow the states to petition for a variance.⁸⁴ APCC states that it would support a variance approach.⁸⁵ Ohio PUC asserts that it is within its authority to keep local coin rates low by requiring LECs to reduce the costs of various payphone services to PSPs.⁸⁶ California PUC argues that the Commission should adopt an approach to local coin rates that is a hybrid of setting federal guidelines and deferring to the states.⁸⁷ It argues that federal guidelines should allow states maximum participation in setting rates for payphones generally, and should recognize the interest of states in setting end-user rates for local calls and directory assistance calls.⁸⁸

30. The RBOCs argue that the Commission should deregulate local coin rates entirely and allow the market to determine the rate in any particular location.⁸⁹ BellSouth, SW Bell, and US West argue that the Commission should deregulate local coin rates immediately.⁹⁰ Bell Atlantic, NYNEX, and Pacific Telesis contend that the Commission should deregulate local

⁸¹ US West Comments at 4.

⁸² See, e.g., Indiana URC Comments at 3-4; Iowa Comments at 2; Maine Comments at 2; Missouri PSC Reply at 3; Montana PSC Reply at 2; New York DPS Comments at 4; New York City Comments at 9; Ohio PUC Comments at 5; Oklahoma CC Comments at 3; Texas PUC Comments at 2; Virginia SCC Comments at 2. See also Cable & Wireless Comments at 5; MCI Comments at 4; MPTA Comments at 12-13.

⁸³ Id.

⁸⁴ Florida PSC Comments at 3; Indiana URC Reply at 3 (only when states do not directly regulate payphone rates); Tennessee Reply at 1.

⁸⁵ APCC Reply at 10.

⁸⁶ Ohio PUC Reply at 2-4.

⁸⁷ California PUC Comments at 12-13.

⁸⁸ Id. California PUC also argues that the Commission's proposed petition process for review of state-determined local rates might raise state constitutional issues, because any review process must depend on state constitutions and the procedural safeguards developed by those constitutions. Id. at 10.

⁸⁹ RBOC Comments at 20; Ameritech Reply at 7; BellSouth Comments at 5; SW Bell Comments at 3; US West Reply at 5-6.

⁹⁰ RBOC Comments at 21.

coin rates pursuant to federal standards after a transition period.⁹¹ GTE argues that deregulation of local coin rates would be appropriate after a two-year transition period.⁹² BellSouth contends that the Commission has the requisite authority to review local coin rates during any transition period.⁹³

31. USTA, GTE, WorldCom, and Florida PSC argue that, because PSPs receive commissions on 0+ intraLATA calls, these 0+ intraLATA calls should be treated like interLATA 0+ calls for purposes of compensation.⁹⁴ On the other hand, Virginia SCC contends that intraLATA 0+ calls should be treated in the same manner as local coin calls.⁹⁵ CompTel argues that because intraLATA calls are frequently routed to the LEC, not the presubscribed carrier, for which there may not be a commission paid to the PSP or location provider, treating intraLATA 0+ calls as interLATA 0+ calls would require IXCs to pay compensation on calls for which they receive no benefit.⁹⁶

32. The RBOCs and APCC, among others, contend that the Commission, to ensure compensation for "each and every completed intrastate and interstate call," should mandate that callers make a coin deposit or otherwise provide per-call compensation for "411" directory assistance calls.⁹⁷ They argue that such compensation is necessary to recover the costs associated with use of the payphone to make a directory assistance call.⁹⁸ SW Bell believes that per-call compensation for directory assistance calls is appropriate, but it specifies that the end user should be required to pay for these calls through a coin deposit.⁹⁹ Oklahoma CC argues that if the incumbent LEC charges independent payphone providers for directory assistance calls, then the LEC should be required to impute this cost to its own payphones for each directory assistance call.¹⁰⁰ Ohio PUC argues that the LEC providing the directory assistance service should not be

⁹¹ Id. at 22-23.

⁹² GTE Reply at 5.

⁹³ BellSouth Comments at 6.

⁹⁴ Florida PSC Comments at 4; GTE Comments at 5; USTA Reply at 5; WorldCom Comments at 8.

⁹⁵ Virginia SCC Comments at 2.

⁹⁶ CompTel Comments at 5.

⁹⁷ APCC Comments at 23; Ameritech Comments at 8; RBOC Comments at 5; Telaleasing Reply at 6.

⁹⁸ Id.

⁹⁹ SW Bell Comments at 9; SW Bell Reply at 6-7.

¹⁰⁰ Oklahoma CC Comments at 2.

permitted to charge the PSP for it, and, therefore, per-call compensation would not be necessary.¹⁰¹

33. Because Section 276(b)(1)(A) requires a plan to ensure fair compensation for "each and every completed intrastate and interstate call," some commenters argue that the Commission is obligated to determine what constitutes a "completed" call for purposes of per-call compensation. Several of these commenters further argue that the Commission should define a "completed call" as a call that is answered by the called party.¹⁰² They argue that compensating unanswered calls will lead to uneconomic rates for payphone users and will be contrary to a caller's expectations about when a call is billed. On the other hand, some of the independent payphone providers argue that a "completed call" consists of any call that reaches the carrier's platform, regardless of whether the call ultimately reaches the called party.¹⁰³ These independent payphone providers argue that per-call compensation is appropriate for these calls, because the payphone is being used for these calls and is, therefore, unable to earn other revenue.¹⁰⁴

34. Some IXC's provide different definitions of what should be considered a "completed call." Sprint and MCI argue that a call is completed when it earns revenue for the carrier.¹⁰⁵ WorldCom contends that an access code call is completed when it is billed, and a subscriber 800 call is completed when answer supervision is returned.¹⁰⁶ Other parties argue that, because it is often difficult for the parties to know whether a call was answered by the called party, the Commission should use a duration surrogate for completed calls.¹⁰⁷ The debit card providers, in particular, favor a duration surrogate because they estimate that fifty percent of debit card calls are not completed to the called party.¹⁰⁸ Under this approach, they argue, any call placed from a payphone below a certain duration would be excluded because it would be likely that the call was not completed to the called party within that time period. The threshold duration proposed by these commenters varies from 42 seconds¹⁰⁹ to 60 seconds.¹¹⁰ The RBOCs

¹⁰¹ Ohio PUC Comments at 6.

¹⁰² See, e.g., American Express Reply at 5; Cable & Wireless Comments at 6-8; CompTel Comments at 11; Excel Comments at 5; GTE Comments at 3; ITA Comments at 17-18; TRA Comments at 19; Voice Reply at 9.

¹⁰³ APCC Reply at 24; Brill Comments at 3.

¹⁰⁴ Id.

¹⁰⁵ MCI Comments at 2; Sprint Comments at 13.

¹⁰⁶ WorldCom Comments at 9-10.

¹⁰⁷ See, e.g., Conquest Comments at 11; Intellicall Comments 33-34; ITA Reply at 4; One Call Reply at 4-5.

¹⁰⁸ See, e.g., ITA Reply at 4.

¹⁰⁹ One Call Reply 4-5.

argue that a 60-second threshold should be used,¹¹¹ while APCC believes that the Commission should not rely on any duration threshold.¹¹² The RBOCs argue that multiple calls made through use of a payphone's "#" button, even though they require billing information to be dialed only once, should be counted as separate calls for compensation purposes.¹¹³

35. Several commenters suggest alternative or supplementary approaches to per-call compensation. The RBOCs collectively contend that the Commission should look to compensating incoming calls in the future, because Section 276 does not differentiate between calls originated and received by a payphone.¹¹⁴ SW Bell and US West, in their individual capacities, argue that the Commission must ensure fair compensation for incoming calls in this proceeding.¹¹⁵

36. AT&T, the RBOCs, GTE, USTA, Florida PSC, Indiana URC, and various independent payphone providers agree with the tentative conclusion in the Notice that the Commission should provide compensation for international calls that make use of a payphone.¹¹⁶ These commenters argue that there is no basis to exclude these calls from a compensation mechanism, and that a payphone performs the same functions for all types of calls.¹¹⁷ AT&T and APCC argue that the term "interstate," as used in Section 276(b)(1)(A), includes international calls.¹¹⁸ Sprint, MCI, and other IXC's oppose the Commission's tentative conclusion and argue that compensation for international calls goes beyond the plain language of the Section 276; that Congress would have specified compensation for "international" or "foreign" calls, as it did in other provisions of the 1996 Act, if it intended such compensation; and that the Commission does

¹¹⁰ Conquest Comments at 11; Intellicall Comments at 33-34. Cf. CompTel Comments at 12 (billing a 25 second call as "completed" is an unreasonable practice).

¹¹¹ RBOC Reply at 3.

¹¹² APCC Reply at 28.

¹¹³ RBOC Comments at 17; accord Sprint Comments at 13.

¹¹⁴ RBOC Comments at 5-6.

¹¹⁵ SW Bell Comments at 9; US West Comments at 5.

¹¹⁶ See, e.g., Actel Comments at 6; Ameritech Comments at 12; AT&T Comments at 5; CPA Comments at 2-3; Florida PSC Comments at 3; GTE Comments at 3; Indiana URC Comments at 3; NJPA Comments at 5; One Call Comments at 4; RBOC Comments at 2; Telaleasing Reply at 6; USTA Comments at 3.

¹¹⁷ Id.

¹¹⁸ AT&T Comments at 5; APCC Reply at 12.

not otherwise have authority to impose this compensation obligation.¹¹⁹ MCI argues that such compensation for international calls billed to non-U.S. carrier customers is not practicable, because the Commission does not have the requisite jurisdiction to require the foreign carrier to bill and collect the PSP compensation.¹²⁰

37. In response to the Commission's request for comment on how it might address possible compensation fraud associated with the improper dialing of subscriber 800 numbers to increase compensation payments, a wide range of commenters argue that the Commission must take strong enforcement action, including imposing severe penalties, on any party engaging in such fraud.¹²¹ These commenters further argue that while the possibility of fraud exists, the Commission cannot refuse to compensate subscriber 800 calls.¹²² The RBOCs, GTE, and Cable & Wireless contend that, in addition to enforcement action by the Commission, the carrier-payors should be given some latitude to take action and withhold compensation to parties who engage in fraud.¹²³ MCI and American Express argue that the Commission should require the LECs to report any suspicious calling patterns with regard to subscriber 800 numbers.¹²⁴ Other parties argue that the "carrier pays" compensation mechanism proposed by the Commission encourages fraud.¹²⁵ Several parties further argue that requiring the calling party to deposit coins for subscriber 800 calls would eliminate the incentive to engage in fraudulent calling.¹²⁶ Sprint argues that keeping the per-call compensation amount at the marginal cost of the use of the payphone would also reduce fraudulent calling.¹²⁷ AT&T contends that the Commission should use a surrogate setting forth the average number of subscriber 800 calls from a payphone to calculate the payment of per-call compensation for these calls.¹²⁸ To prevent other

¹¹⁹ CompTel Comments at 13; Excel Comments at 3; MCI Comments at 3; Sprint Comments at 8; WorldCom Comments at 10.

¹²⁰ MCI Comments at 3-4.

¹²¹ See, e.g., Actel Comments at 6; APCC Reply at 26-28; MCI Comments at 5; NJPA Comments at 6; RBOC Reply at 8.

¹²² Id.

¹²³ Cable & Wireless Comments at 5-6; GTE Comments at 5-6; RBOC Reply at 8.

¹²⁴ MCI Comments at 5; American Express Reply at 10-11.

¹²⁵ See, e.g., Frontier Reply at 5-6; MobileMedia Reply at 7-8.

¹²⁶ Arch Comments at 5; Intellicall Comments at 27; Page Net Comments at 10-11; One Call Comments at 5.

¹²⁷ Sprint Comments at 11.

¹²⁸ AT&T Comments at 15.

types of potential fraud, Frontier and Sprint argue that the Commission must adopt a definition of "payphone" for compensation purposes.¹²⁹

38. Four states, Maine, New Hampshire, New Mexico, and Vermont, filing joint comments, argue that Section 276 applies only to payphones provided by the RBOCs.¹³⁰ They argue further that the Commission is without authority under Section 276 to adopt rules that apply to all payphones, including those provided by non-BOC LECs and independent payphone providers.¹³¹

ii. Compensation Amount

39. APCC, AT&T, Sprint, and other commenters argue that the Commission should adopt a national uniform rate that it deems compensable for all calls using a payphone.¹³² They contend that uniformity is necessary to avoid imposing undue burdens on carriers that would result from varying rates. In addition, they assert that the payphones perform identical functions for each type of compensable call.¹³³ The RBOCs argue that the Commission need not prescribe a rate for each type of compensable call, and should, instead, let the market dictate the appropriate per-call rate.¹³⁴

40. Some commenters argue that certain types of calls should receive a different per-call compensation amount than others. WorldCom contends that the amount of compensation should vary with the duration of the call to the extent that marginal cost also varies.¹³⁵ Invision and the Inmate Coalition, providers of inmate payphones, assert that the Commission should adopt a \$.90 per-call compensation rate that would apply only to calls using inmate payphones located in penal institutions.¹³⁶ They argue that payphone services for inmates is a distinct, specialized industry, which is required to provide, at a significant capital investment, operator service, fraud control, extensive call controls, and monitoring services throughout the duration

¹²⁹ Frontier Reply at 6; Sprint Reply at 2.

¹³⁰ Maine Comments at 2-3.

¹³¹ Id.

¹³² See, e.g., AirTouch Comments at 7; APCC Comments at 4, 9, 12; AT&T Comments at 10; Sprint Comments at 24.

¹³³ AT&T Comments at 10; Sprint Comments at 24.

¹³⁴ RBOC Reply at 1.

¹³⁵ WorldCom Comments at 20.

¹³⁶ Inmate Coalition Comments at 13; Invision Comments at 5. Ameritech states that it would not oppose a special per-call compensation rate for calls using an inmate payphone. Ameritech Reply at 8-9.

of its calls. They argue further that these factors warrant a higher per-call compensation rate.¹³⁷ Another inmate payphone provider, Gateway, contends that the Commission should not adopt a separate, higher rate for inmate payphone calls, because such a rate would give inmate providers double recovery of costs already included in their rates and surcharges.¹³⁸ Gateway also argues that the Commission should defer consideration of a higher rate until after its OSP Reform proceeding, and that inmate providers should petition the various states for relief from state operator services rate caps.¹³⁹ MCI opposes the provision of per-call compensation for calls using either inmate payphones or semi-public payphones.¹⁴⁰ It asserts that semi-public payphones already receive adequate compensation from the premises owners.¹⁴¹ The RBOCs contend that per-call compensation for semi-public payphones is warranted, because there is no statutory basis to preclude semi-public payphones from receiving compensation, and carriers benefit from dial-around traffic that originated on semi-public payphones.¹⁴²

41. The RBOCs also argue that any per-call rate the Commission sets should be regarded as a default rate, which parties would be free to alter by contract.¹⁴³ MCI and Sprint contend that the per-call amount should be adjusted downward in the future to account for technological advances that will reduce PSP costs.¹⁴⁴ APCC contends, on the other hand, that the per-call compensation rate should rise automatically at the same rate as inflation.¹⁴⁵

42. A number of IXC's and other commenters support the Commission's tentative conclusion that the amount of per-call compensation should be based on PSP costs and

¹³⁷ Inmate Coalition Comments at 2-3; Invision Comments at 5.

¹³⁸ Gateway Reply at 3-7.

¹³⁹ Id.

¹⁴⁰ MCI Comments at 3.

¹⁴¹ Id.

¹⁴² RBOC Reply at 3. Semi-public payphones are payphones that a LEC typically provides in exchange for both the coin revenue generated by the payphone and a monthly fee, paid by the location provider, discounted from the rate for a business line. Semi-public payphones tend to be located, at the request of the location provider, where public access is limited and an insignificant amount of calls are made.

¹⁴³ Id. at 10-11; RBOC Comments at 12. See also Sprint Comments at 13.

¹⁴⁴ MCI Comments at 15; Sprint Comments at 21. Sprint also argues that the per-call compensation rate should be subject to periodic Commission review. Sprint Comments at 24.

¹⁴⁵ APCC Reply at 34; contra Sprint Comments at 24.

argue that the Commission must adopt a marginal cost standard.¹⁴⁶ They argue that under a marginal cost standard, a PSP would be allowed to recover the costs associated with the wear on the payphone's keypad and handset, along with additional costs over fixed costs.¹⁴⁷ MCI provides a study authored by the Hatfield Associates, which analyzes the costs of providing service for access code calls, and concludes that the appropriate compensation amount would be \$.083 for each compensable call.¹⁴⁸ MCI argues that the \$.083 per call is fair compensation, because PSPs already receive revenues in excess of costs.¹⁴⁹ Sprint contends that the Commission should adopt a marginal cost-based rate of \$.0675 per call, based on its view that the \$.25 rate it currently pays for access code calls fairly compensates independent payphone providers for all calls.¹⁵⁰ In its analysis, Sprint found that 27% of all non-revenue generating calls from payphones are operator service calls for which 27% of \$.25 is the appropriate per-call compensation amount, *i.e.*, \$.0675.¹⁵¹ MCI and Sprint further argue that the Commission should consider anew the \$.12 per-call compensation amount originally proposed in the Commission's 1991 Notice of Proposed Rulemaking in the access code call compensation proceeding, CC Docket No. 91-35, because this rate reflects payphone costs on a per-call basis.¹⁵² AT&T favors an unspecified compensation amount related to marginal cost and based on the total services long-run incremental cost ("TSLRIC") method, which would recover the costs of providing and maintaining the payphone instrument, exclusive of coin collection functions, and the monthly SLC and other tariffed LEC services specific to payphones.¹⁵³ AT&T argues that the TSLRIC standard is "more generous" than a marginal-cost standard, because it allows PSPs to recover the portion of payphone costs that benefit the carriers whose customers initiate calls at payphones.¹⁵⁴

¹⁴⁶ See, *e.g.*, American Express Reply at 6-8; CompTel Comments at 16; Frontier Comments at 6-10; ITA Reply at 12-13; MCI Comments at 13; Oklahoma CC Comments at 2; Sprint Comments at 17-18; WorldCom Comments at 19-20.

¹⁴⁷ *Id.*

¹⁴⁸ MCI Comments at 13. MCI also argues that \$.1559 per call is the maximum per-call amount that the Commission should consider under a marginal cost standard. MCI Reply at 2.

¹⁴⁹ *Id.* at 3.

¹⁵⁰ Sprint Comments at 23. Sprint also argues that because PSPs are already adequately compensated, the Commission should prescribe a per-call compensation amount of \$0, which it claims would comply with Section 276(b)(1)(A). *Id.* at 18.

¹⁵¹ *Id.* Sprint argues that, in any case, the maximum permissible per-call compensation would be \$.25, with a downward adjustment mechanism to take advantage of technological developments that will reduce costs. *Id.* at 21.

¹⁵² MCI Comments at 13-14; Sprint Comments at 21.

¹⁵³ AT&T Comments at 6-8.

¹⁵⁴ AT&T Reply at 2.

43. The RBOCs and the independent payphone providers oppose the use of a marginal cost-based compensation amount.¹⁵⁵ They argue that fair compensation embraces more than cost recovery, and that marginal cost disregards fixed costs, which are significant for a PSP.¹⁵⁶ USTA and GTE argue that AT&T's proposed TSLRIC-based compensation is not relevant to the provision of competitive services where rates should be guided by the market, and it does not permit full recovery of costs.¹⁵⁷

44. The RBOCs and the independent payphone providers argue that the Commission should adopt a per-call compensation standard that looks both to overall PSP costs and revenues and to market-based pricing. The RBOCs and GTE, in particular, advocate a per-call compensation amount that relies on market-based proxies.¹⁵⁸ The RBOCs provide a study that analyzes commission rates paid to PSPs by IXC's generally and commission rates paid by AT&T and concludes that the appropriate per-call compensation amount should be in the range of \$.81 to \$.90 per call.¹⁵⁹

45. APCC contends that the Commission must consider market-based surrogates in setting a per-call compensation amount.¹⁶⁰ It proposes that the Commission adopt a compensation amount of \$.40 per call, if the Commission extends this rate to local coin calls, or \$.80 per call for all non-local coin calls that use a payphone.¹⁶¹ APCC argues that these proposed amounts would fairly compensate PSPs for use of their payphones.¹⁶² Peoples, the largest independent payphone provider, argues that the Commission should adopt a per-call compensation amount of \$.45, which would apply to all calls, including local coin calls.¹⁶³ Peoples includes in its comments summaries of data that, it maintains, show that Peoples' average pre-tax cost per call using its payphones is \$.40.¹⁶⁴ Other independent payphone providers argue that the

¹⁵⁵ See, e.g., APCC Comments at 11; APCC Reply at 30-34; IPTA Comments at 5-6; MICPA Comments at 2-3; RBOC Reply at 11-15; Telaleasing Reply at 6-7.

¹⁵⁶ RBOC Reply at 13.

¹⁵⁷ GTE Reply at 2; USTA Reply at 5, 7.

¹⁵⁸ GTE Comments at 9; RBOC Comments at 8-11.

¹⁵⁹ RBOC Comments at 8-11.

¹⁶⁰ APCC Comments at 31-34.

¹⁶¹ Id. at 31.

¹⁶² Id. at 31-34.

¹⁶³ Peoples Comments at 14-15.

¹⁶⁴ Id. at 20-24.

Commission should adopt per-call compensation amounts that range from \$.40 to \$.55 per call.¹⁶⁵ AT&T and Sprint disagree with the approach proposed by APCC and the RBOCs and argue that it relies too much on the factors set forth in the Second Report and Order, which they claim are flawed, and on 0+ commissions, which reflect PSP opportunity costs, a basis for compensation rejected by the Commission in the Second Report and Order.¹⁶⁶ In addition, they argue that APCC and the RBOCs do not disclose actual costs, but instead include substantial overhead, advertising, and marketing and sales expenses in their model.¹⁶⁷

46. One Call contends that the local coin rate should be used as a surrogate for a fair per-call compensation amount.¹⁶⁸ Conquest argues that the Commission should cap the per-call compensation amount at the rate for a local coin call.¹⁶⁹ AT&T, MCI, and the RBOCs all oppose use of a local coin rate surrogate to achieve fair compensation for PSPs.¹⁷⁰ They argue that local coin rates are kept artificially low by regulators and have no relationship to either cost or the market.¹⁷¹

47. Some commenters contend that the Commission should adopt a per-call compensation amount that is within the range established by the 1992 Second Report and Order in the access code call compensation proceeding. NTCA argues that continued use of the \$.40 per call rate adopted in the Second Report and Order would not be disruptive and would ensure fair compensation for PSPs.¹⁷² APCC argues that the Second Report and Order sets forth the type of market-based surrogates that are appropriate for the Commission to consider in the instant proceeding.¹⁷³ PageNet argues that the Commission should examine the \$6 per month LEC access charge compensation for payphones, as set forth in the Second Report and Order, and use this amount plus an intrastate recovery element to reach an amount that could be divided by the

¹⁶⁵ See, e.g., Actel Comments at 7 (\$.50); Communications Central Comments at 9-10 (\$.40); IPTA Comments at 6 (\$.55); NJPA Comments at 8-9 (\$.50).

¹⁶⁶ AT&T Reply at 4-11; Sprint Reply at 15-17.

¹⁶⁷ Id.

¹⁶⁸ One Call Comments at 8.

¹⁶⁹ Conquest Comments at 11.

¹⁷⁰ AT&T Reply at 11; MCI Comments at 14; RBOC Reply at 16.

¹⁷¹ Id.

¹⁷² NTCA Comments at 2.

¹⁷³ APCC Reply at 29.